

AMENDED IN ASSEMBLY MARCH 21, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2078

Introduced by Assembly Member Nielsen
(Coauthor: Senator La Malfa)

February 23, 2012

An act to amend Section 289.6 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL’S DIGEST

AB 2078, as amended, Nielsen. Sexual activity with detained persons.

Existing law makes it a ~~misdemeanor~~ *crime for certain persons, including* an employee or officer of a public entity detention facility, or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility, or a person or agent of a public or private entity detention facility, to engage in sexual activity with a consenting adult who is confined in a detention facility. For purposes of those provisions, “detention facility” includes a vehicle used to transport a person during a person’s period of confinement.

This bill would *make those provisions applicable to peace officers, and would* specify that transport of a person during confinement also includes transporting a person after he or she has been arrested but has not been booked. By expanding the scope of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 289.6 of the Penal Code is amended to
2 read:

3 289.6. (a) (1) An employee or officer of a public entity health
4 facility, or an employee, officer, or agent of a private person or
5 entity that provides a health facility or staff for a health facility
6 under contract with a public entity, who engages in sexual activity
7 with a consenting adult who is confined in a health facility is guilty
8 of a public offense. As used in this paragraph, “health facility”
9 means a health facility as defined in subdivisions (b), (e), (g), (h),
10 and (j) of, and subparagraph (C) of paragraph (2) of subdivision
11 (i) of, Section 1250 of the Health and Safety Code, in which the
12 victim has been confined involuntarily.

13 (2) An employee or officer of a public entity detention facility,
14 or an employee, officer, ~~or~~ agent of a private person or entity that
15 provides a detention facility or staff for a detention facility, ~~or a~~
16 person or agent of a public or private entity under contract with a
17 detention facility, ~~or a~~ volunteer of a private or public entity
18 detention facility, *or a peace officer* who engages in sexual activity
19 with a consenting adult who is confined in a detention facility; is
20 guilty of a public offense.

21 (3) An employee with a department, board, or authority under
22 ~~the Youth and Adult Correctional Agency~~ *California Department*
23 *of Corrections and Rehabilitation* or a facility under contract with
24 a department, board, or authority under the ~~Youth and Adult~~
25 ~~Correctional Agency~~ *California Department of Corrections and*
26 *Rehabilitation*, who, during the course of his or her employment
27 directly provides treatment, care, control, or supervision of inmates,
28 wards, or parolees, and who engages in sexual activity with a
29 consenting adult who is an inmate, ward, or parolee, is guilty of a
30 public offense.

31 (b) As used in this section, the term “public entity” means the
32 state, federal government, a city, a county, a city and county, a
33 joint county jail district, or any entity created as a result of a joint
34 powers agreement between two or more public entities.

35 (c) As used in this section, the term “detention facility” means:

1 (1) A prison, jail, camp, or other correctional facility used for
2 the confinement of adults or both adults and minors.

3 (2) A building or facility used for the confinement of adults or
4 adults and minors pursuant to a contract with a public entity.

5 (3) A room that is used for holding persons for interviews,
6 interrogations, or investigations and that is separate from a jail or
7 located in the administrative area of a law enforcement facility.

8 (4) A vehicle used to transport confined persons during their
9 period of confinement, including transporting a person after he or
10 she has been arrested but has not been booked.

11 (5) A court holding facility located within or adjacent to a court
12 building that is used for the confinement of persons for the purpose
13 of court appearances.

14 (d) As used in this section, “sexual activity” means:

15 (1) Sexual intercourse.

16 (2) Sodomy, as defined in subdivision (a) of Section 286.

17 (3) Oral copulation, as defined in subdivision (a) of Section
18 288a.

19 (4) Sexual penetration, as defined in subdivision (k) of Section
20 289.

21 (5) The rubbing or touching of the breasts or sexual organs of
22 another, or of oneself in the presence of and with knowledge of
23 another, with the intent of arousing, appealing to, or gratifying the
24 lust, passions, or sexual desires of oneself or another.

25 (e) Consent by a confined person or parolee to sexual activity
26 proscribed by this section is not a defense to a criminal prosecution
27 for violation of this section.

28 (f) This section does not apply to sexual activity between
29 consenting adults that occurs during an overnight conjugal visit
30 that takes place pursuant to a court order or with the written
31 approval of an authorized representative of the public entity that
32 operates or contracts for the operation of the detention facility
33 where the conjugal visit takes place, to physical contact or
34 penetration made pursuant to a lawful search, or bona fide medical
35 examinations or treatments, including clinical treatments.

36 (g) Any violation of paragraph (1) of subdivision (a), or a
37 violation of paragraph (2) or (3) of subdivision (a) as described in
38 paragraph (5) of subdivision (d), is a misdemeanor.

39 (h) Any violation of paragraph (2) or (3) of subdivision (a), as
40 described in paragraph (1), (2), (3), or (4) of subdivision (d), shall

1 be punished by imprisonment in a county jail not exceeding one
2 year, or in the state prison, or by a fine of not more than ten
3 thousand dollars (\$10,000) or by both that fine and imprisonment.

4 (i) Any person previously convicted of a violation of this section
5 shall, upon a subsequent violation, be guilty of a felony.

6 (j) Anyone who is convicted of a felony violation of this section
7 who is employed by a department, board, or authority within the
8 Youth and Adult Correctional Agency shall be terminated in
9 accordance with the State Civil Service Act (Part 2 (commencing
10 with Section 18500) of Division 5 of Title 2 of the Government
11 Code). Anyone who has been convicted of a felony violation of
12 this section shall not be eligible to be hired or reinstated by a
13 department, board, or authority within the Youth and Adult
14 Correctional Agency.

15 SEC. 2. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.

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26 CORRECTIONS: _____

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28 _____